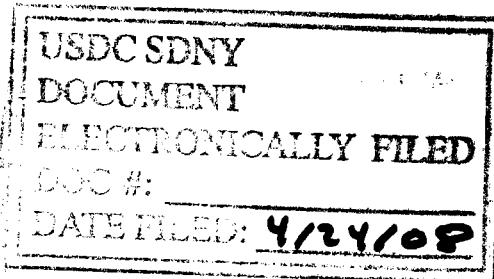


DRUBNER & HARTLEY, L.L.C.**ATTORNEYS AT LAW**

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APR 24 2008



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April 22, 2008

BY OVERNIGHT MAIL

The Honorable Richard M. Berman
United States District Judge
United States Courthouse
500 Pearl Street, Room 650
New York, NY 10007

Re: *Drubner & Hartley, L.L.C. v. U.S. Department of Commerce and
The National Technical Information Service* (Case No. 02cv02355)

Dear Judge Berman:

<i>Rule 16 conference on 5/5/08</i>	
<i>(c) 9:00 A.M.</i>	
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Date:	<u>4/27/08</u>
<i>Richard M. Berman</i>	
Richard M. Berman, U.S.D.J.	

I respectfully submit this letter on behalf of Drubner & Hartley, L.L.C. ("Drubner & Hartley"), plaintiff in the above-referenced action, in response to the Court's April 21, 2008 Order (the "April 21 Order") discontinuing the case and allowing plaintiff ten days to apply to have the action restored to the calendar. Plaintiff respectfully requests that the action be restored to the calendar based on the showing of good cause set forth below.

The April 21 Order discontinued the action based on plaintiff's failure to appear at a conference previously scheduled by the Court for that same day. Prior to receiving the April 21 Order, plaintiff was not aware that such a conference had been set. Accordingly, on April 22, 2008, I called Your Honor's chambers and spoke with Andrew Brettler. I explained to Mr. Brettler that I was in receipt of the April 21 Order, but did not see any entry on the docket indicating that an April 21 conference had been scheduled, nor was I aware of having received any notification of the conference. Mr. Brettler informed me that notice of the conference had been sent to plaintiff by facsimile on March 11, 2008. Mr. Brettler further informed me that the fax had been sent to (212) 629-4568 and that he had confirmation that it was received that day at 11:47 a.m. I told Mr. Brettler that I was not familiar with that number, but it was not Drubner & Hartley's fax number. Mr. Brettler responded that this was the fax number listed on the docket for my firm.

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Upon further investigation, I have determined that (212) 629-4568 is Drubner & Hartley's fax number from its previous address, which it moved out of almost two and a half years ago. Prior to speaking with Mr. Brettler, neither I nor anyone else at my firm had noticed that the wrong fax number was listed on the docket. With the exception of the mistaken fax number, all other information regarding Drubner & Hartley on the docket is correct.¹ I am not sure how Drubner & Hartley's old fax number came to be listed, but I am taking steps to ensure that any profile information on file with the Court regarding the firm is up to date and correct.

I apologize for not having noticed the mistaken fax number before this incident and for the inconvenience that this has caused the Court. Nevertheless, I respectfully submit that plaintiff's failure to attend the April 21 conference was based on an excusable mistake and that there is good cause to have the action restored to the calendar. In this regard, an order designating this action as an ECF case was entered on March 10, 2008 and my firm has been regularly monitoring the docket electronically to ensure that it is aware of any developments in the proceedings. The April 21 conference, however, was not listed on the electronic docket and until I received notice of the Court's April 21 Order, I was not aware that a conference had been set. Accordingly, plaintiff's failure to attend the conference does not represent a failure to prosecute the action but rather an oversight based on an outdated fax number.

Moreover, plaintiff submits that its inadvertent failure to attend the April 21 conference has not materially impeded the progress of the action. In this regard, in accordance with Federal Rule of Civil Procedure 4(i), on April 1, 2008, plaintiff sent a copy of the summons and complaint in this action by certified mail to the Attorney General of the United States and the civil process clerk of the United States Attorney for the Southern District of New York. Defendants have 30 days from when those mailings were sent to answer or otherwise respond to the complaint. As a result, defendants have yet to appear in the action and have until May 5, 2008 to respond to the complaint. Accordingly, if the action is restored to the calendar, defendants may respond to the complaint as scheduled and the parties may appear at any conference set by the Court without further delay. I have contacted Carolina Fornos, the Assistant United States Attorney that will be representing defendants in this action and she advised me that she also was not aware of the conference, but if the case is restored to the calendar, defendants will answer on or before May 5, 2008.

For the foregoing reasons, plaintiff respectfully requests that the Court restore the above-referenced action to the calendar so that the case may proceed. I am available, at the Court's

¹ As indicated at the top of this letter, Drubner & Hartley's correct fax number is (212) 736-2122. This has been Drubner & Hartley's fax number since approximately November, 2005. Not included on the docket, however, is my e-mail address, which is chellman@dholaw.com. The (212) 629-4568 fax number belongs to a company called Prime Office Centers, from which Drubner & Hartley rented space prior to November, 2005. Although this apparently continues to be a working fax number, Drubner & Hartley no longer has any affiliation with the number and Prime Office Centers did not contact Drubner & Hartley to inform someone that it had received a fax addressed to the firm.

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convenience, to provide any further information or to respond to any questions that the Court may have regarding this matter.

Respectfully submitted,



A handwritten signature in black ink, appearing to read "Charles S. Hellman".

Charles S. Hellman

CSH/kpr
cc: Carolina Fornos, Esquire